

MEDICINE BOARD[653]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272C.4, the Board of Medicine hereby proposes to amend Chapter 14, “Iowa Physician Health Committee,” Iowa Administrative Code.

The proposed amendments update language in the chapter and provide for the sharing of physician health program participant information with the Board if a participant’s information held by the physician health committee indicates that a significant risk to the public exists.

The Board approved these amendments during a regularly scheduled meeting on April 9, 2010.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on May 25, 2010. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 SW Eighth Street, Suite C, Des Moines, Iowa 50309; or by E-mail to mark.bowden@iowa.gov.

There will be a public hearing on May 25, 2010, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine is located at 400 SW Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 272C.

The following amendments are proposed.

ITEM 1. Amend rule **653—14.2(272C)**, definition of “Self-report,” as follows:

“*Self-report*” means an ~~applicant~~ applicant’s or a ~~licensee~~ licensee’s providing written ~~or oral~~ notification to the IPHC that the applicant or the licensee has been, is, or may be impaired ~~prior to the board’s receiving a complaint or report alleging the same from a third party~~. Information related to an impairment or a potential impairment which is provided on a license application or renewal form may be considered a self-report upon the request of the applicant or licensee and authorization from the board and agreement by the IPHC.

ITEM 2. Amend rule 653—14.3(272C) as follows:

653—14.3(272C) Purpose. The IPHC ~~evaluates~~, assists, and monitors the recovery, rehabilitation, or maintenance of licensees who self-report impairments or are referred by the board pursuant to 653—14.11(272C) and, as necessary, notifies the board in the event of noncompliance with contract provisions. The IPHC is both an advocate for licensees’ health and a means to protect the health and safety of the public.

ITEM 3. Amend rule 653—14.5(272C) as follows:

653—14.5(272C) Eligibility. To be eligible for participation in the IPHP, an applicant or a licensee must self-report an impairment or suspected impairment directly to ~~the coordinator of~~ the IPHP or be referred by the board for an impairment or suspected impairment pursuant to 653—14.11(272C) and be determined by the IPHC to be an appropriate candidate for participation in the IPHP.

14.5(1) An applicant’s or licensee’s participation in the program does not divest the board of its authority or jurisdiction over the applicant or licensee. An applicant or licensee with an impairment or suspected impairment as defined at 653—14.2(272C) may retain eligibility to participate in the program if appropriate while subject to investigation or discipline by the board for matters other than the alleged impairment.

~~14.5(1)~~ **14.5(2)** An applicant or a licensee is ~~deemed~~ may be determined to be ineligible to participate in the program as a self-reporter or a referral from the board if the committee finds sufficient evidence of any of the following:

a. The applicant or licensee ~~has engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third party or for personal profit or gain; provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the committee.~~

b. ~~At the time of self-reporting, the licensee is already under an Iowa board order related to an impairment; The applicant or licensee fails to sign a contract when recommended by the committee.~~

c. ~~The applicant or licensee has caused harm or injury to a patient; The IPHC determines it will be unable to assist the applicant or licensee.~~

d. ~~The board is currently investigating the applicant or licensee for matters related to an alleged impairment; or~~

e. ~~The applicant or licensee provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the board or committee.~~

14.5(2) The IPHC ~~may determine a referral from the board pursuant to 653—14.11(272C) is inappropriate for participation in the IPHP if:~~

a. ~~The applicant or licensee fails to sign a contract.~~

b. ~~The IPHC determines it will be unable to assist the applicant or licensee.~~

14.5(3) The IPHC shall report to the board any knowledge of violations of administrative rules or statutes ~~unrelated to other than~~ the impairment.

ITEM 4. Amend paragraph **14.7(1)“a”** as follows:

a. Participation in the program for applicants or licensees impaired as a result of alcohol or drug ~~abuse~~, dependency, or addiction is set at a minimum of five years. The committee may offer a contract with a shorter duration to an applicant or licensee who can demonstrate successful participation in another state’s physician health program, who can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

ITEM 5. Amend paragraph **14.7(2)“a”** as follows:

a. *First instance.* Upon receiving notification of a first instance of noncompliance including, but not limited to, a relapse, the IPHP shall make a report to the board which identifies the applicant or licensee by IPHP number, describes the relevant terms of the applicant’s or licensee’s contract and the nature of the noncompliance and includes recommendations as to whether the applicant or licensee should be allowed to remain in the program or whether formal disciplinary charges should be filed by the board.

ITEM 6. Amend subrules 14.9(1) to 14.9(4) as follows:

14.9(1) The IPHC ~~may is~~ is authorized to communicate information about an IPHP participant to the applicable regulatory authorities, ~~professional societies~~, or impaired licensee programs of any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice medicine or in which the participant ~~may seek~~ seeks licensure. IPHP participants must report their participation to the applicable physician health program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

14.9(2) The IPHC ~~may is~~ is authorized to communicate information about an IPHP participant to any person assisting in the participant’s treatment, recovery, rehabilitation, monitoring, or maintenance.

14.9(3) The IPHC ~~may is~~ is authorized to communicate information about an IPHP participant to the board in the event a participant does not comply with the terms of the contract. The IPHC may provide the board with a participant’s IPHP file in the event the participant does not comply with the terms of the contract and the IPHC refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against a licensee for noncompliance with the terms of the contract, the board may include information about a licensee’s participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing.

14.9(4) ~~The IPHC may communicate information about an IPHP participant to the board if the IPHP receives information that the participant has violated any of the grounds for eligibility contained in rule~~

653—14.5(272C). The IPHC is authorized to communicate information about an IPHP participant to the board if the information held by the IPHC indicates a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

ITEM 7. Rescind subrule **14.9(5)**.

ITEM 8. Renumber subrules **14.9(6)** and **14.9(7)** as **14.9(5)** and **14.9(6)**.

ITEM 9. Amend paragraph **14.11(2)“f”** as follows:

f. The IPHC shall notify the board upon the licensee's successful completion of the program. The board ~~shall~~ may file an order recognizing the licensee's successful completion of the program, ~~and that order shall be a public record~~ in cases where the referral was included in a public record. An order recognizing completion of the program shall be a public record.

ITEM 10. Rescind subrule **14.11(3)**.